DOCUMENT RESUME

ED 213 836 CE 031 459

TITLE	The Role of OSHA in Safety and Health. Module SH-02. Safety and Health.
INSTITUTION	Center for Occupational Research and Development, Inc., Waco, Tex.
SPONS AGENCY	Office of Vocational and Adult Education (ED). Washington, DC. Div. of National Vocational Programs.
PUB DATE	81
CONTRACT	300-79-0709
NOTE	40p.; For related documents see CE 031 450-507.
AVAILABLE FROM	The Center for Occupational Research and Development, 601 Lake Air Dr., Suite C, Waco, TX 76710 (Instructor Guides, $9.75 each; Learning Modules, $3.00 each. Entire set of Learning Modules available as two subsets: SH-21, SH-41, SH-43, SH-45, and SH-48, $12.00; remaining 45 modules, $97.50).
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Behavioral Objectives; Employee Responsibility; Employer Attitudes; Federal Legislation; Federal Regulation; *Health Education; *Learning Activities; Learning Modules; Postsecondary Education; *Safety Education; Secondary Education; *Vocational Education
IDENTIFIERS	*Occupational Safety and Health Act 1970; Occupational Safety and Health Administration

ABSTRACT

This student module on the role of OSHA (Occupational Safety and Health Act) in Safety and Health is one of 50 modules concerned with job safety and health. This module looks at the OSHA Act, its aims, and the rights and responsibilities of employers and workers under the Act. Following the introduction, 16 objectives (each keyed to a page in the text) the student is expected to accomplish are listed (e.g., Name three functions of OSHA.) Then each objective is taught in detail, somtimes accompanied by illustrations. Learning activities are included. A list of references and answers to learning activities complete the module. (CT)

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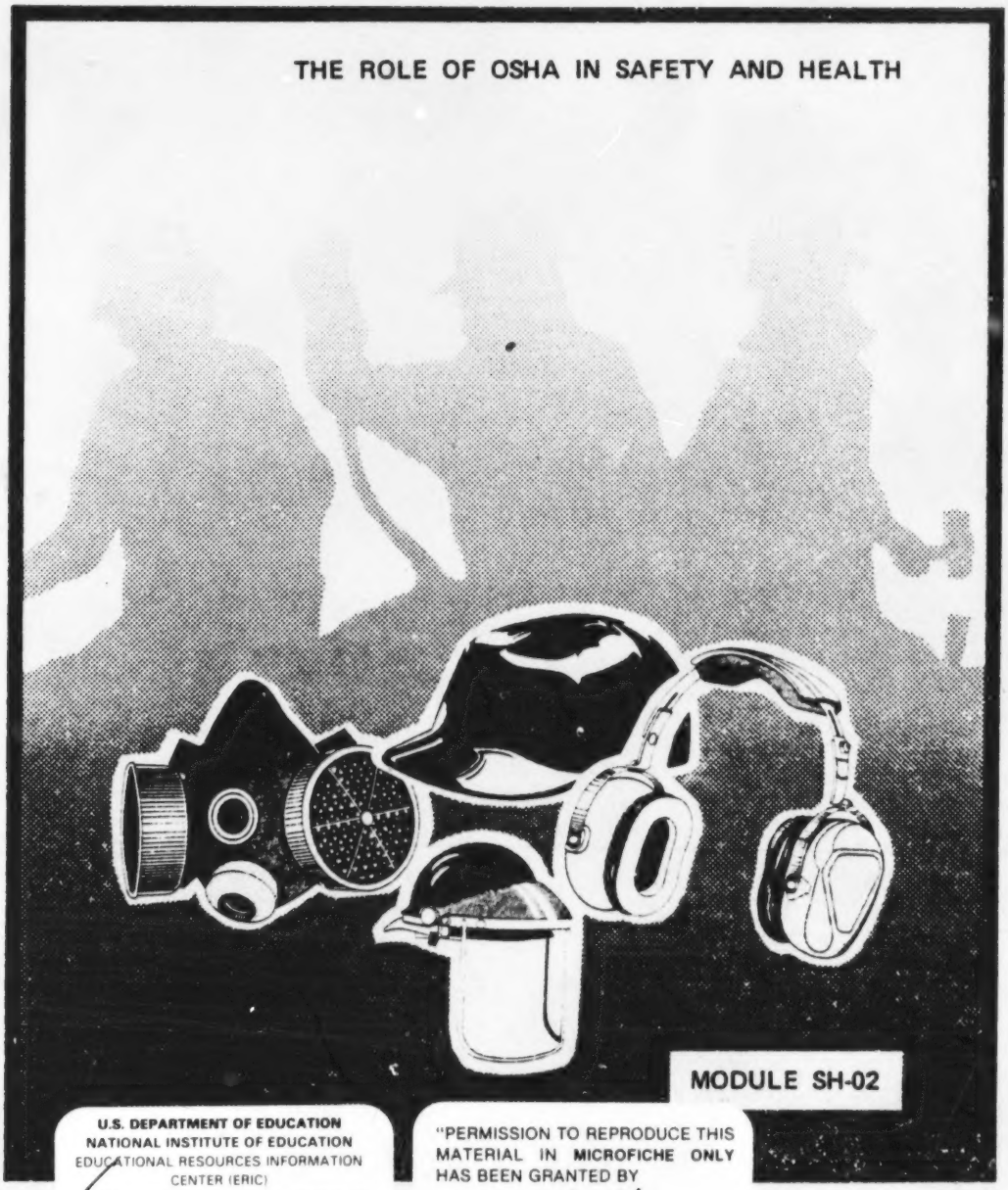
SAFETY AND HEALTH

THE ROLE OF OSHA IN SAFETY AND HEALTH



MODULE SH-02

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INTRODUCTION

Before the nineteenth century (1800's), America was mainly a farming society. Then the development of cloth-making machinery and the steam engine caused the American way of life to change greatly. Factories were built and people began moving from country areas to the cities, looking for work in these factories.

Working conditions in the early factories were miserable: work areas were overcrowded; ventilation and lighting were poor; bathrooms, washrooms, and heating were nonexistent. Two-thirds of the workers in the new factories were women and children, and they usually worked 14-16 hours a day. There were no holidays or vacations for workers. Illnesses, accidents, and even deaths caused by poor working conditions were accepted as inevitable occurrences in the factories. Conditions like these continued to exist in America for over 100 years, in spite of attempts made by different states, businesses, and insurance companies to promote safety in industry.

It was not until the mid-1960's that the need was seen for a Federal safety and health organization that would set up safety standards and have the authority to enforce them. Industry, labor groups, and safety organizations started to press for such a system, and this led to the signing of the Occupational Safety and Health Act (OSHAct) in 1970.

OSHAct gives employers both general and specific responsibilities. Generally, they must provide their employees with safe and healthful workplaces. The Act sets up reporting, recordkeeping, and inspection procedures through the Secretary of Labor and the Occupational Safety and Health Administration (OSHA). It also sets up civil and criminal penalties which can be imposed by OSHA officers when they discover violations.

When we consider work not done and wages lost, medical expenses and disability compensation, the cost of job-related injury and illness to the nation's economy is enormous. We cannot calculate the human cost. While the OSHAct can provide the guidelines and the agency to give protection, each worker must be informed about the Act for it to be effective. This module will look at the OSHAct, its aims, and the rights and responsibilities of employers and workers under the Act. Workers and future workers – that is,

students in vocational training schools and programs – are urged to read this Introduction to OSHA and Job Safety and Health.

OBJECTIVES

Upon completion of this module, the student should be able to:

1. State the basic aim of OSHAct. (Page 3)
2. Name three functions of OSHA. (Page 4)
3. Name the agency that hears cases in which employees contest action started by OSHA. (Page 5)
4. Name four functions of the National Institute of Occupational Safety and Health (NIOSH). (Page 5)
5. Name three types of workplaces not covered by OSHAct. (Page 7)
6. Define the action an employee can take if exercising rights granted by OSHA has resulted in discriminatory treatment. (Page 8)
7. State the employee's general responsibility as set out in OSHAct. (Page 10)
8. State who has the final responsibility for an on-the-job accident, regardless of the cause. (Page 11)
9. State the "general duty" responsibility of the employer. (Page 12)
10. Rank in order of importance the five main categories of potential OSHA inspections. (Page 13)
11. Name three types of variances that can be granted employers. (Page 14)
12. Name two items that are discussed by the compliance officer and the employer at the exit interview following an inspection. (Page 15)
13. List six types of workplace violations that are covered by OSHAct, other than violation of the General Duty Clause. (Page 17)
14. Name two types of penalties that can be assessed for OSHAct standard violations, and the agency that has the authority to assess each penalty. (Page 19)
15. Name three ways top level management can express genuine interest in safety within the company. (Page 22)
16. Name the two basic recordkeeping forms an employer must maintain. (Page 24)

OBJECTIVE 1: State the basic aim of OSHAct.

In 1970, the U.S. Congress was concerned with the following annual figures:

- 14,000 workers had died of injuries sustained on the job.
- 2.5 million workers were disabled from job-related injuries.
- 300,000 workers had occupational diseases.

These figures made it clear to Congress that existing safety and health laws were not sufficient, because there was no authority that could enforce standards (regulations) and penalize violators of the standards. Also, many of the existing safety and health laws had been developed by individual industries or by employers who had federal contracts. Therefore, they were directed to specific groups of workers rather than to the entire workforce. To satisfy the need for more complete safety and health standards that could be enforced, Congress passed the Occupational Safety and Health Act (OSHAct) of 1970. The Act, which became effective on April 28, 1971, was co-authored by Senator Harrison A. Williams, (Dem-N.J.) and Congressman William Steiger (Rep-Wisc.). Therefore, it is often referred to as the Williams-Steiger Act.

The basic aim of OSHAct is to ensure "so far as possible every working man and woman in the nation safe and healthful working conditions — to preserve our human resources." This goal can be reached only when employers and employees read, understand, and comply with the Act's objective which is to reduce workplace hazards. Workplace hazards are conditions that threaten a worker's safety or health.

ACTIVITY 1:*

State the basic aim of OSHAct.

_____

_____

*Answers to activities begin on page 28.

OBJECTIVE 2: Name three functions of OSHA.

The United States Department of Labor is responsible for administering the OSHAct. To do this, the Department has established an agency called the Occupational Safety and Health Administration (OSHA) under the Secretary of Labor. The law provided for an Assistant Secretary to serve as Chief of OHSA. Under the leadership of the Assistant Secretary, OSHA has three main functions: (1) to set standards, (2) to conduct workplace inspections, and (3) to issue citations and to assess money penalties to employers who violate standards.

The setting of standards is based on research and recommendations from many different sources: the National Institute for Occupational Safety and Health (NIOSH); state and local governments; standards-producing organizations such as the Amercian National Standards Institute (ANSI), or the National Fire Protection Association (NFPA). These outside organizations make recommendations that are examined by one or more advisory committees of OSHA; these committees include safety and health experts, labor and management and state government representatives, and other members of the general public. Only after this process of careful review is a standard proposed as law.

OSHA can be effective because it has the power to enforce safety and health standards. Safety and health regulations have existed in different forms for many years, but carrying them out was voluntary. To ensure that OSHA regulations would be followed, OSHA provided for safety inspectors, known as <u>compliance officers</u>. These inspectors have the right to enter and inspect, without delay and at reasonable hours, any workplace covered by OSHAct. They may inspect all conditions, structures, machines, processes, devices, and materials in the workplace. Also, they may privately question any employer, supervisor, representative, or employee. According to a 1978 ruling by the U.S. Supreme Court, OSHA may not conduct inspections without a warrant unless the employer agrees. It may inspect after getting a search warrant from a judge or an equivalent, based on <u>administrative probable cause</u>. This means reports by employees, insurance companies or others that unsafe or

or unhealthy conditions exist in the workplace; the occurrence of death or serious injury in the workplace would also provide probable cause.

The enforcement of the OSHAct is carried out from regional offices established throughout the United States. A list of U.S. Department of Labor regional offices for OSHA appears in the Appendix of this module.

ACTIVITY 2:

Name three functions of OSHA.

1. _____
2. _____
3. _____

OBJECTIVE 3: Name the agency that hears cases in which employees contest action initiated by OSHA.

When an action initiated by OSHA against an employer is contested by the employer, the case is referred to the Occupational Safety and Health Review Commission. The commission consists of a board of three members who have been appointed by the President of the United States with the advice and consent of the Senate. Its actions are limited to contested cases only. The Commission conducts its own investigation. As determined by its findings, the Commission may agree with, modify, or overrule OSHA's findings.

ACTIVITY 3:

Name the agency that hears cases in which employers contest action started by OSHA.

_____

OBJECTIVE 4: Name four functions of the National Institute of Occupational Safety and Health (NIOSH).

The OSHAct set up the National Institute for Occupational Safety and Health (NIOSH) to provide services in research, training and education in areas of job safety and health. NIOSH is part of the Department of Health

and Human Services (DHHS). It is not part of OSHA's enforcement activity. Its programs are designed to help workers discover and understand hazards in the workplace so that work conditions can be made safer. The main functions (duties) of NIOSH are listed below:

- To develop and set up criteria for standards for job safety and health.
- To conduct research experiments and surveys on various problems related to job safety and health, including psychological factors.
- To provide technical help to OSHA.
- To conduct education and training programs for personnel who carry out OSHAct functions.

NIOSH also sets up limits for known safety and health hazards. OSHA, in turn, has the authority to enforce the standards NIOSH sets up.

OSHAct requires NIOSH to publish yearly a list of all known toxic (poisonous) substances and the amount of the substances at which toxicity occurs. To obtain this information, NIOSH is allowed to inspect workplaces. NIOSH may ask that medical examination and tests be given to find out whether illnesses are being caused by the work environment.

Employers and employees can obtain technical assistance from the following services provided by NIOSH:

- Evaluation of hazards determined from on-site tests.
- Technical information about health or safety conditions in the work area, including information on hazards of working with specific solvents and situations in which to wear protective clothing.
- Accident prevention.
- Industrial hygiene (health).
- Medical services.

ACTIVITY 4:

Indicate with a check (✓) which of the following is NOT a function of NIOSH.

___ 1. Doing research on safety and health programs.

___ 2. Conducting education programs for personnel who carry out OSHAct functions.

___ 3. Proposing standards as law.

___ 4. Developing criteria for standards.

___ 5. Providing technical assistance to OSHA.

OBJECTIVE 5: Name three types of workplaces not covered by OSHAct.

With only a few exceptions, OSHAct applies to every employer who has one or more employees or who is engaged in a business affecting commerce (the buying and selling of goods). Currently this involves over five million businesses and 85 million workers in all 50 states, the District of Columbia, Puerto Rico, and all U.S. possessions. Employers who have more than 10 employees must keep records of all work-related injuries and illnesses.

Those workers not covered by OSHA are (1) employees of farms at which only members of the farm employer's family are employed; (2) employees who are self-employed; and (3) employees at workplaces that are covered by other federal agencies. (However, if another federal agency is authorized to regulate safety and health working conditions in a particular industry and does not do so in a specific area, then OSHA standards apply.)

Federal agencies are covered by OSHAct, with each agency required to set up and keep a thorough, working, safety and health program. The program must be in line with OSHA standards for private employers.

OSHA regulations do not apply to state and local governments in their role as employers. However, the Act offers states the opportunity to develop plans for and to put into use their own safety and health programs. The program must be at least as effective as OSHA's program for private employers. Once the state plan is approved, OSHA funds 50 percent of the program's operating costs. OSHA continuously checks and evaluates the state program to make sure that the program is effective.

ACTIVITY 5:

Name three types of workplaces not covered by OSHAct.

1. _____

2. _____

3. _____

OBJECTIVE 6: Define the action an employee can take if exercising rights granted by OSHA has resulted in discriminatory treatment.

Under OSHAct, each employee has the right to "a place of employment that is free from recognized hazards that will cause or are likely to cause death or serious harm." A hazard may be defined as any workplace condition that threatens a worker's safety or health. Also, according to OSHA, a hazard is "recognized" when it is generally accepted in a particular industry as being hazardous, when it is detectable by the human senses, or when it has been determined through accepted tests.

OSHA gives the employee the right to begin proceedings for the acceptance of a new standard or for changing one that is already law. An employee may object in writing to a proposed standard. An employee also has the right to be informed when an employer applies for a variance, or relief, from a standard and to appeal OHSA's decision on any variance or standard.

Employees must be given information on effects of, exposure to, and precautions for all toxic materials used in the workplace. They are also entitled under OSHAct to see their personal exposure records.

Any employee who recognizes that a hazard may exist can request an investigation by sending a signed notice to the Department of Labor, describing in detail any hazard that exists in the workplace. If requested, the name of the worker who sent the notice will not be revealed to the employer. No action may be taken by an employer against an employee who files a complaint. If an employee feels discriminated against because of exercising rights, a written complaint may be filed to OSHA within 30 days of the incident.

OSHAct says employers shall not punish or discriminate against workers for exercising rights such as:

- Complaining to an employer, union, OSHA, or any other government agency about job safety and health hazards.
- Filing safety or health grievances.
- Participating in a workplace safety and health committee or in union activities concerning job safety and health.
- Participating in OSHA inspections, conferences, hearings, or other OSHA-related activities.

If an employee is exercising these or other OSHA rights, the employer may not discriminate against that worker in any way, such as through firing, demotion, taking away seniority or other benefits earned, transferring the worker to an undesirable job or shift, or threatening or harassing the worker.

If the employer has knowingly allowed the employee to do something in the past (such as leaving work early) he or she may be violating the law by punishing the worker for doing the same thing following a protest of hazardous conditions. If the employer knows that a number of workers are doing wrong, he or she cannot legally single out for punishment the worker who has taken part in safety and health activities.

Following a complaint of employer discrimination, OSHA investigates. If an employee has been illegally punished for exercising safety and health rights, OSHA asks the employer to restore the worker's job, earnings, and benefits. If necessary, OSHA takes the employer to court. In such cases, the worker does not pay any of the legal fees.

Under OSHAct, an employee also has the following rights:

- To have an authorized employee representative accompany the OSHA compliance officer during the inspection hour.
- To respond to questions from the OSHA compliance officer, particularly if there is no authorized employee representative accompanying the compliance officer.
- To be paid for any time spent on OSHA inspection activity.
- To observe any monitoring or measuring of hazardous materials and to have the right to see these records, as specified under the Act.
- To have an authorized representative review the Log and Summary of Occupational Injuries (OSHA No. 200) at a reasonable time and in a reasonable manner.
- To request a closing discussion with the compliance offer following an inspection.
- To submit a written request to NIOSH for information on whether a substance in the workplace has possible toxic effects in the amounts being used, and have the complainant's name withheld from employer.
- To be notified when the employer applies for a variance from an OSHA standard, and to testify at a variance hearing and appeal the final decision.

ACTIVITY 6:

1. Indicate with a check (✓) those actions that are within the rights granted to employees under the OSHAct.

   ____ a. Participating in a union committee that is discussing safety and health issues.

   ____ b. Filing a safety grievance with the OSHA regional office.

   ____ c. Complaining to the supervisor about a suspected job health hazard.

   ____ d. Discussing job safety and health conditions with an OSHA inspector.

2. Define the action an employee can take if exercising rights granted by OSHA has resulted in discriminatory treatment. _____

   _____

3. Write "yes" or "no" in answer to the following questions.

   ____ a. Under OSHAct, may an employee of a plant where possibly harmful dusts in the air are being measured by plant personnel, observe that measurement taking place?

   ____ b. Under OSHAct, may an employee request a closing discussion with the compliance officer following an inspection?

   ____ c. Under OSHAct, may an employee see the Log and Summary of Occupational Injuries (OSHA No. 200) on demand?

OBJECTIVE 7: State the worker's general responsibility as set out in OSHAct.

OSHA does not cite employees for violations of their responsibilities. However, the Act does specify that each employee "shall comply with all occupational safety and health standards and all rules, regulations, and orders issued under the Act" that are applicable.

Each worker is expected to do the following:

- Read the OSHA poster at the jobsite. (All employers are required to display in a prominent place the offical OSHA poster, which describes rights and responsibilities under OSHA's law.)
- Follow all OSHA standards which apply.
- Follow all employer safety and health rules and regulations.
- Wear or use prescribed protective equipment while working.
- Report all hazardous conditions to the supervisor.
- Report any job-related injury or illness to the employer, and seek treatment promptly.
- Cooperate with the OSHA compliance officer conducting an inspection if he or she inquires about safety and health conditions in the workplace.
- Exercise his or her rights under the Act in a responsible manner.

ACTIVITY 7:

State the worker's general responsibility as specified in OSHAct. _____

_____

OBJECTIVE 8: State who has the final responsibility for an on-the-job accident, regardless of the cause.

Congress recognized during the formation of OSHAct that employers have more control over working conditions than workers do. Therefore, the final responsibility for on-the-job accidents, regardless of the cause of the accident, was placed on the employer. However, employers also have certain rights under OSHAct. These are:

- The right to be advised by OSHA personnel of the reason for an inspection.
- The right to participate in the walk-around inspection with the compliance officer and to have an entry and exit interview.
- The right to file a notice of contest with the OSHA area director within 15 working days of receipt of a citation and notice of penalty.
- The right to apply to OSHA for a temporary variance from a standard if unable to comply because of materials, equipment, or personnel being unavailable to make changes within the required time.

- The right to apply to OSHA for a permanent variance from a standard if it can be proved that the facilities or methods of operation provide protection that is at least as effective as that required by the standard.
- The right to be safeguarded from the exposure of trade secrets by OSHA compliance officers during an inspection.

ACTIVITY 8:

State who has the final responsibility for an on-the-job accident, regardless of the cause of the accident.

OBJECTIVE 9: State the "general duty" responsibility of the employer.

The OSHAct imposes both general and specific duties upon the employers. The "general duty clause" regulates an employer's responsibility where there are no specific standards which apply to a particular hazard. Specific duties under the OSHAct include following the OSHA Standards. Briefly, standards are first published in the "Federal Register" in proposed form. After public comment, the final standard must be published in the "Federal Register," which makes the standard effective. Today, detailed final standards apply to almost every aspect of the work environment. Employers are required by the OSHAct to make reports, keep records, and post certain safety and health notices in the workplace.

Specific responsibilities of the employer are:

- To meet the general duty of providing a workplace free from recognized hazards that cause, or may cause, death or serious harm to workers, and to follow standards, rules and regulations issued under the Act.
- To know OSHA standards that must be followed and make copies of these available to workers who ask to see them.
- To examine workplace conditions to make sure they follow the appropriate standards.
- To use color codes, posters, labels or signs to warn workers of possible hazards.
- To provide medical examinations when required by OSHA standards.

- To report to the nearest OSHA office any fatal accident or one which results in five or more workers being hospitalized for treatment.
- To keep records required by OSHA of work-related injuries and illnesses.
- To treat with fairness any employees who properly use their rights under the Act.
- To post OSHA citations (orders to follow the standards) at or near the workplace involved. Each citation, or a copy of it, must remain posted until whatever is wrong has been corrected, or for three working days, whichever is longer.
- To correct violations cited (mentioned in a citation) within the prescribed period.

ACTIVITY 9:

State the "general duty" responsibility of the employer.

_____

_____

OBJECTIVE 10: Rank in order of importance the five main categories of potential OSHA inspections.

A compliance officer is a safety and health specialist who works under the supervision of an OSHA area director. The compliance officer is responsible for conducting inspections to determine whether employees and employers are in compliance with the standards and rules of OSHAct.

Each compliance officer is specially trained in various fields of safety for about two years before being allowed to carry out an OSHA compliance inspection on his or her own. It would be impossible to inspect all workplaces covered by OSHAct at one time, so inspections are made based on the following order of importance.

1. Imminent danger situations — that is, any condition where there is a reasonable certainty that a danger exists that can be expected to cause death or serious physical harm immediately, or before the danger can be corrected through normal enforcement procedures. Serious physical harm is any type of harm that could cause permanent or long-term damage to the body or could cause a temporary disability which would require inpatient treatment at a hospital.

2. Accidents that result in the hospitalization or death of five or more employees.
3. Valid complaints from workers of unsafe or unhealthful working conditions.
4. High-hazard industries or workplaces chosen for inspection because of death, injury or illness rates.
5. Reinspection of workplaces to determine whether hazards have been corrected.

ACTIVITY 10:

Rank in order of importance the five main categories of potential OSHA inspections.

1. _____
2. _____
3. _____
4. _____
5. _____

OBJECTIVE 11: Name three types of variances that can be granted employers.

There are some occasions when an employer may not be able to comply with OSHA standards within the required amount of time. In these situations, employers can ask for a variance if they can prove that their methods of operation provide worker protection at least as effective as that required by OSHA. Three types of variances that can be issued are the following:

- Temporary variance.
- Permanent variance.
- National defense variance.

A temporary variance can be granted if professional or technical personnel is not available, equipment or material is not available, or if time will not permit the needed building or altering of facilities. The employer's lack of money is insufficient grounds for asking for a variance. However, any small business that "is likely to suffer substantial economic injury" in making needed additions or changes to equipment, facilities, or methods of

operation, is able to apply for a long-term loan through the Small Business Administration (SBA). Small businesses that qualify for such a loan may apply for it before or after an inspection.

Before a temporary variance will be issued, the employer must take action to temporarily safeguard employees against the hazards.

A permanent variance means that the employer must show detailed evidence that the conditions, practices, methods, operations, or processes used or proposed by an employer will provide a workplace that is as safe and healthful as those directed by the OSHA standard.

To avoid serious lessening of the national defense, the Secretary of Labor, under the national defense variance, may make rules and regulations allowing reasonable variances, tolerances, and exemptions as necessary.

ACTIVITY 11:

Match the type of variance with its description below.

____	1. Temporary variance.	a.	Extra time granted to come into compliance.
____	2. Permanant variance	b.	Variances or exemptions granted so that our national defense will not be weakened.
____	3. National defense variance.	c.	Employer shows evidence that the workplace is as safe as standards required even if actual standards are not met.

OBJECTIVE 12: Name two items that are discussed by the compliance officer and the employer at the exit interview following an inspection.

When carrying out a compliance inspection, the compliance officer may enter, without delay and at reasonable times, the workplace of any employer under the Act. Provisions of the Act do not allow advance notice of the inspection. It is the responsibility of the compliance officer to provide whatever instruments are required to test toxicity levels as well as physical, mechanical, or biological hazards present in the workplace.

The compliance officer first gives his or her credentials to the employer, then explains the reason for the visit and the general procedure that will be followed during the inspection.

The compliance officer reviews company safety and health records and interviews workers. If a worker's written complaint is involved, it is presented at this time, (the worker's name is withheld if so requested).

The compliance officer asks the employer to name a representative for the "walk-around." If there is an organized union in the workplace, a representative of the union should accompany the officer. If there is no employee organization, the compliance officer may discuss conditions with individual workers during the walk-around. Normally, regulations require that the workers' representative shall be a worker. However, if good cause can be shown, a third party will be allowed to participate. The compliance officer has final authority to settle any dispute as to who is the authorized representative of the employer or the employees. Any person whose conduct interferes with a fair and orderly inspection may be barred by the compliance officer from the walk-around.

The compliance officer must respect the right of the employer to identify those areas in the establishment that contain or might reveal trade secrets.

During the inspection, workers may tell the compliance officer of any violation of the Act that is believed to exist. Company records of deaths, injuries, and illnesses will be examined, and records of worker exposure to toxic substances and harmful physical agents will be checked.

The employee and employer will be informed by the compliance officer of any imminent danger situation discovered by the compliance officer. The compliance officer will inform the employer and worker that a recommendation to the Secretary of Labor for a civil action to limit such conditions is being started in a U.S. District Court. If the Secretary decides not to seek court action against imminent danger, the workers have the right to bring court action to make the Secretary do so. A citation and notice of proposed penalties may be sent out because of an imminent danger, even though the employer corrects it completely.

After the inspection, the compliance officer holds an exit interview with the employer to discuss what has been observed and to review probable

violations. This process may take several days and may involve several compliance officers.

A written report is prepared by the compliance officer for the OSHA area director, who determines what citations will be issued and what penalties, if any, will be proposed. This citation is sent to the employer by certified mail. Citations inform the employer and employee of the regulations that allegedly have been violated and the time allowed for correction.

ACTIVITY 12:

Name two items that are discussed by the compliance officer and the employer at the exit interview following an inspection.

1. _____
2. _____

OBJECTIVE 13: List six types of workplace violations that are covered by OSHAct other than violation of the General Duty Clause.

If the compliance officer finds violations of standards, regulations, or the General Duty Clause during an inspection, citations can be issued at the workplace following the closing conference, although this is not too common. No citation can be issued at the worksite unless all citations are to be issued at that time. If the employer does not contest within 15 working days from receipt of the citation, the citation becomes a final order of the Review Commission that cannot be reversed, and the penalty becomes due. The Citation and Notification of Penalty form is sent to the employer by certified mail.

The employer must post citations at, or near, each place where the alleged violations occurred. Each citation must remain posted until the violation has been abated (corrected), or for three working days, whichever is longer. It is the employer's responsibility to make sure that the citation is not altered, defaced, or covered by other material.

The compliance officer's primary objective is to determine whether the employer is in compliance with the safety and health standards prescribed

by the Act. The General Duty Clause is used by the compliance officer when there is no specific standard of the Act that covers a particular hazard.

The OSHAct provides the basis for determining six types of alleged violations: de minimis (very minor), other than serious, serious, willful, repeated, and imminent

De minimis violations are those that have no direct or immediate relationship to job safety and health.

For example, a company that is situated directly across the street from a hospital emergency room may neglect to post the number of the nearest medical facility beside the telephone, as required by OSHA. Although the letter of the law may be broken by the absence of the number, under the circumstances, the violation is very minor.

An other than serious violation is one that has a direct relationship to job safety and health but probably would not cause death or serious physical harm, such as a tripping hazard in an area where the fall would probably not be serious.

A serious violation is one where there is substantial evidence that death or serious physical harm could result and that the employer knew, or should have known, of the existence of a hazard. Examples would be missing guards on power presses, conveyors, and so forth. Mere unawareness of the hazard does not lessen the violation.

A willful violation is where the condition and evidence shows that the employer knowingly violated the Act and that the employer was aware that a hazardous condition existed, yet made no reasonable effort to eliminate it. An example of "willfulness" would be where an employer had been advised by employees, insurance inspectors, or company safety personnel that an alleged hazardous condition existed and had made no reasonable effort to look into the situation.

A repeated violation occurs where, upon reinspection, the compliance officer finds a violation of a previously cited violation. Justification for issuing a citation for a willful or repeated violation takes considerable judgment, and OSHA carefully reviews all evidence before issuing such citations.

Imminent danger is a violation in which it is reasonably certain that a hazard exists which could cause death or serious physical harm immediately or before the hazard can be eliminated through regular enforcement procedures.

If the employer fails to eliminate or correct such a condition without delay, the compliance officer, through the Area Director, can go directly to the nearest federal district court for the necessary legal action. Follow-up inspections are conducted to ensure that cited violations have been corrected.

ACTIVITY 13:

List six types of workplace violations that are covered by OSHAct (other than violations of the General Duty Clause).

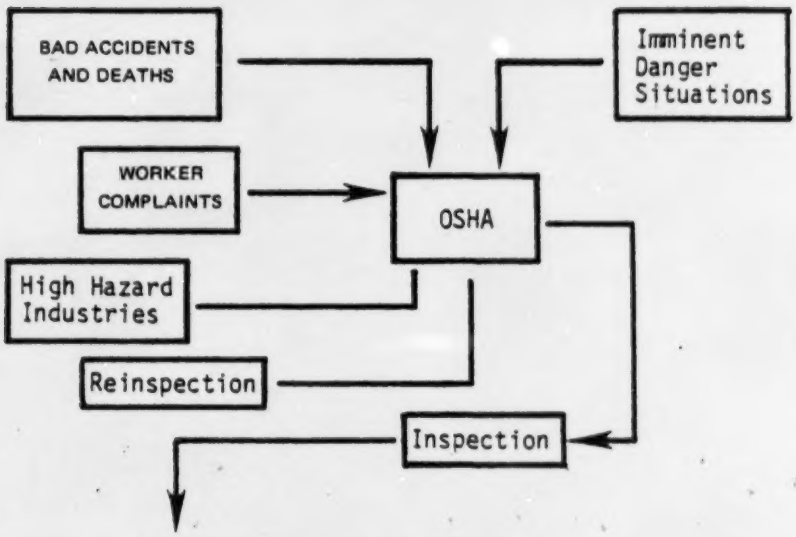
1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

OBJECTIVE 14: Name two types of penalties that can be assessed for OSHAct violations, and the agency that has the authority to assess each penalty.

At the same time that a citation is issued, or within a reasonable time of an OSHA inspection, the OSHA Area Director must let an employer know the dollar amount of the penalty, or that there is to be no penalty. The Act provides for both civil and criminal penalties for employer violations. Civil penalties are dollar fines that may be charged for not following the General Duty Clause, an OSHA standard, or for an employer's failure to correct a violation which has been cited earlier. The Occupational Safety and Health Review Commission is able, under the Act, to charge these fines. Criminal penalties can be given only by the United States Courts. The Act provides criminal penalties for:

- Committing a willful violation that results in a worker's death.
- Giving advance notice of an inspection.
- Filing false documents.
- Assaulting (attacking) enforcement personnel.

Penalties must be imposed in cases of serious violations or where the OSHA poster informing workers of their rights is not displayed. Penalties for nonserious, repeated, or willful violations are decided on their merits, as are cases in which the employer has not corrected a hazard. There are no penalties for de minimis violations. The causes and possible results of OSHA inspection are summed up in Figure 1.



COMPLIANCE – no citations or fines.

DE MINIMIS VIOLATION – citation possible; fines are not levied.

NONSERIOUS VIOLATION – citations likely; fines when proposed, about $50.

SERIOUS VIOLATION – penalties average about $625 per citation.

WILLFUL VIOLATION – if violation results in employee's death, fine of up to $10,000 or six month imprisonment, or both.

IMMINENT DANGER – penalties up to $10,000, depending on seriousness of violation.

Figure 1. Cause and results of OSHA inspection.

When assessing penalties, Area Directors take the following points into consideration:

- Size of the employer's business.
- Seriousness of the violation.
- History of previous violations.

If a compliance officer sees a violation that involves a crime, the matter is referred to the OSHA Regional Solicitor who takes appropriate steps to initiate a criminal proceeding.

In the event an employer is convicted of a willful violation of a standard and the violation results in the death of an employee, the employer is subject to punishment by a fine of not more than $10,000 or by imprisonment of not more than six months or by both. If the conviction is for a violation committed after a previous conviction for an OSHA violation, the punishment is doubled.

Criminal proceedings may be started for the following violations:

- Any person who gives advance notice of an inspection being conducted under the Act is subject to a fine of $1,000 or six months in jail or both.
- A person who makes a false statement, representation, or certification, in any application, record, plan or other document filed or required to be kept by the OSHAct, is subject to a fine of $10,000 or six months in jail or both.
- Killing or assaulting enforcement personnel — any person convicted of killing Department of Labor personnel engaged in the performance of their official duties may be punished by imprisonment for any term or life. A fine of not more than $5,000 or imprisonment for not more than three years, or both, may be imposed upon conviction of any person for forcible resistance to or assault on such personnel. If a dangerous or deadly weapon is used, the fine may be as much as $10,000 and the term of imprisonment may be for as long as ten years or both.

If an employer disagrees with a citation and/or the penalty, a request can be made for an informal conference with the Area Director to discuss the general situation. Once a decision is made to take legal action to contest the citation, the employer has 15 working days from receiving the citation and proposed penalty in which to notify the Area Director that a written appeal is being made to OSHA Review Commission in Washington.

The employer or workers may appeal decisions of the OSHA Review Commission to the United States Circuit Court of Appeals for the circuit in which the case arose.

If the employer or worker(s) does not respond within 15 working days of receiving the citation, the OSHA action automatically becomes a final order of the Review Commission and is not subject to further appeal or review. However, after the 15 days, but before the end of the abatement period (period during which changes can be made), an employer may petition the Review Commision, through the Area Director, for changing of the abatement period.

ACTIVITY 14:

Name two types of penalties that can be assessed for OSHAct standards violations, and the agency that has the authority to assess each penalty.

1. _____
2. _____

OBJECTIVE 15: Name three ways top level management can express genuine interest in safety within the company.

OSHAct does not specifically require the establishment of a company safety program. However, to follow OSHA requirements fully, every company should have one. Company safety programs can serve as a means of detecting and correcting OSHA violations. They provide a framework for following OSHA work practice standards by training workers and adopting and enforcing company safety rules.

In any company, attitudes toward safety filter from the top down. If top level management is interested in prompting and maintaining a safe work area, supervisors will show the same interest. Also the worker's approach to safety and health will probably reflect the supervisor's attitude. Therefore, it is important for top management to express real interest in safety, by (1) enforcing safety policies and programs, (2) recognizing good safety records, and (3) participating in meetings and other events that show support

for company safety. The success of any company safety program is directly related to the amount of support given it by top level management.

An employer should assign the staff responsibility of a company safety program to one individual. The decision concerning which individual or what type of safety program a company should have would depend on the size and type of organization.

Most company safety programs provide for worker training and giving out information, since industrial managers today know that the effectiveness of a safety program depends, to a great extent, on worker behavior. Many of the OSHA standards require that the employers conduct specific and formal training of employees. Other standards imply that employers must inform or train employees in safe work practices.

Because an employer can receive citations and penalties for not following OSHA standards, many employers design safety rules and regulations to prevent unnecessary violations as well as to correct unsafe conditions. The worker must follow the standards set by the employer as well as those set by OSHA. If a worker does not follow any of the standards of his employer or OSHA, the employer may penalize him. Such a penalty could range from a reprimand to firing him, depending on how often and how serious the violation is.

If an employer recognizes that a hazard that exists in the workplace is not covered by a particular standard, it is the employer's duty to train workers in safe operating procedures so that they can protect themselves from the danger of the hazard.

ACTIVITY 15:

Name three ways top level management can express real interest in safety within the company.

1. _____
2. _____
3. _____

OBJECTIVE 16: Name the two basic recordkeeping forms an employer must maintain.

Recordkeeping forms are kept on a calendar year basis. They are not sent to OSHA or any other agency. Rather, they are kept at the company and must be available for inspection by OSHA, or the designated state agency. Two basic forms an employer needs for recordkeeping are: (1) the Log and Summary of Occupational Injuries and Illnesses (OSHA Form No. 200), and (2) the Supplementary Record of Occupational Injuries and Illnesses (OSHA Form No. 101). OSHA Form No. 200, as shown in Figure 2, provides basic summary information on all injury and illness cases. The company must enter all recordable cases in the Log within six working days after learning of their occurrence. Recordable occupational injuries and illnesses include:

- All occupational deaths, regardless of the time between injury and death, or the length of the illness.
- All occupational illnesses.
- All occupational injuries which involve one or more of the following: loss of consciousness, restriction of work or motion, transfer to another job, or medical treatment other than first aid. (More detailed explanations of each category may be found on the reverse side of all OSHA 200 forms.)

A substitute for the OSHA Form No. 200 is acceptable if it is as detailed, as readable, and as understandable as the OSHA form.

OSHA Form No. 101, shown in Figure 3, contains more detailed information about the person injured and the circumstances of the situation than the Log and Summary. It must be completed for every recordable injury or illness. Because the form provides a record of the conditions present when an accident occurs, it is useful in studying the causes and results of accidents. This information can be used to decide the kind of action that must be taken to prevent similar accidents in the future.

At the end of each calendar year, an Annual Summary of log entries for each establishment (part of OSHA Form No. 200) must be prepared and posted in the workplace. Anything other than this form is not acceptable. A copy of this Summary must be posted no later than February 1 of each year in a place where all workers are likely to see it and must remain in place until March 1 of the same year. This form sums up all the information recorded

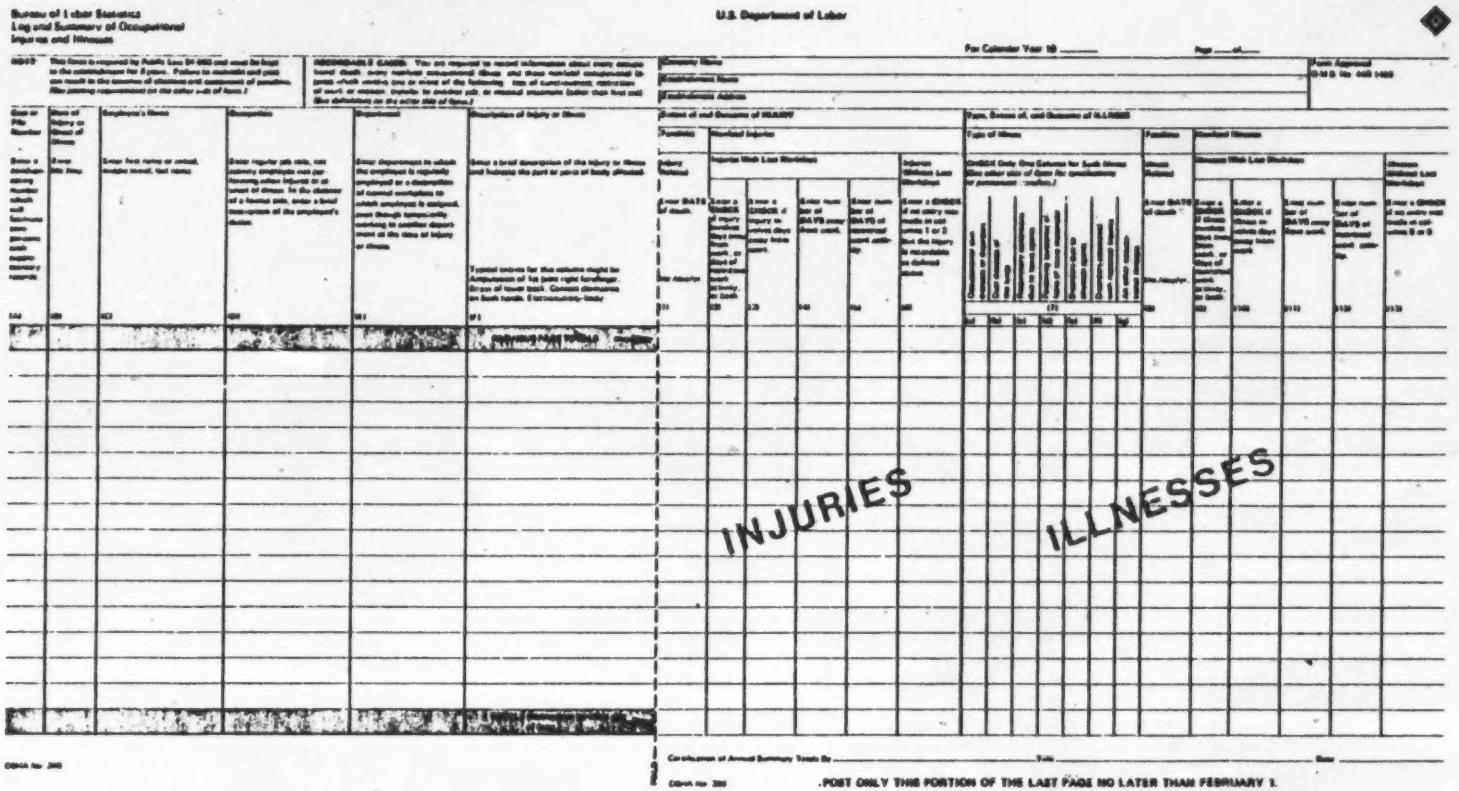


Figure 2. Log and Summary of Occupational Injuries and Illnesses (OSHA Form No. 200).

OSHA No. 101
Case or File No. _____

Form approved
OMB No. 44R 1453

Supplementary Record of Occupational Injuries and Illnesses

EMPLOYER

1. Name _____

2. Mail address _____
(No. and street) (City or town) (State)

3. Location, if different from mail address _____

INJURED OR ILL EMPLOYEE

4. Name _____ Social Security No. _____
(First name) (Middle name) (Last name)

5. Home address _____
(No. and street) (City or town) (State)

6. Age _____ 7. Sex: Male_____ Female_____ (Check one)

8. Occupation _____
(Enter regular job title, not the specific activity he was performing at time of injury.)

9. Department _____
(Enter name of department or division in which the injured person is regularly employed, even though he may have been temporarily working in another department at the time of injury.)

THE ACCIDENT OR EXPOSURE TO OCCUPATIONAL ILLNESS

10. Place of accident or exposure _____
(No. and street) (City or town) (State)

If accident or exposure occurred on employer's premises, give address of plant or establishment in which it occurred. Do not indicate department or division within the plant or establishment. If accident occurred outside employer's premises at an identifiable address, give that address. If it occurred on a public highway or at any other place which cannot be identified by number and street, please provide place references locating the place of injury as accurately as possible.

11. Was place of accident or exposure on employer's premises? _____ (Yes or No)

12. What was the employee doing when injured? _____
(Be specific. If he was using tools or equipment or handling material, name them and tell what he was doing with them.)

13. How did the accident occur? _____
(Describe fully the events which resulted in the injury or occupational illness. Tell what happened and how it happened. Name any objects or substances involved and tell how they were involved. Give full details on all factors which led or contributed to the accident. Use separate sheet for additional space.)

OCCUPATIONAL INJURY OR OCCUPATIONAL ILLNESS

14. Describe the injury or illness in detail and indicate the part of body affected. _____
(e.g.: amputation of right index finger at second joint; fracture of ribs; lead poisoning; dermatitis of left hand, etc.)

15. Name the object or substance which directly injured the employee. (For example, the machine or thing he struck against or which struck him; the vapor or poison he inhaled or swallowed; the chemical or radiation which irritated his skin; or in cases of strains, hernias, etc., the thing he was lifting, pulling, etc.)

16. Date of injury or initial diagnosis of occupational illness _____
(Date)

17. Did employee die? _____ (Yes or No)

OTHER

18. Name and address of physician _____

19. If hospitalized, name and address of hospital _____

Date of report _____ Prepared by _____
Official position _____

Figure 3. Supplementary Record of Occupational Injuries and Illnesses (OSHA Form No 101).

throughout the year on Form No. 200, including injuries, illnesses, number of occurrences, and the total number of workdays lost. This information is useful in finding out the types of incidents that occur most frequently.

Forms OSHA No. 101, or any substitue forms used, and No. 200, must be available to OSHA inspectors. Under recent revisions to OSHA's rules, Log and Summary information must also be made available to workers, former workers, and their named representatives.

OSHA requires that businesses promptly report to state safety and health agencies any accident that results in one or more deaths, or in the hospitalization of five or more employees. The report must be made within 48 hours after the accident. It can be a spoken or written report to the local Federal OSHA area office. In states with approved plans, the report should be made to the agency that has enforcement responsibilities for occupational safety and health. If a spoken report is made, it should always be followed by a written report dated the same day. California is the only state that has an exception to this rule; either death or hospitalization of a single worker requires such reporting.

Under Section 17(c) of the OSHAct, violations of recordkeeping and reporting requirements may be punished by civil penalties of up to $1,000 per violation.

If the employer does not maintain the "Log of Occupational Injuries and Illnesses" and the "Supplementary Record," (or their equivalents), a penalty of $100 will be proposed for each OSHA form not maintained. When no recordable injuries and illnesses have occurred, it will be understood that these forms have been properly kept.

If the "Log of Occupational Injuries and Illnesses" is not compiled, kept, and posted as described above, a penalty of $200 will be proposed. A penalty of $400 will be proposed for each violation of the rule regarding prompt reporting of serious injuries and death.

ACTIVITY 16:

Name the two basic recordkeeping forms an employer must maintain.

1. _____
2. _____

REFERENCES

National Safety Council. Accident Prevention Manual for Industrial Operations. 7th Edition. Chicago: National Safety Council, 1978.

_____. Supervisors Safety Manual. 5th Edition. Chicago: National Safety Council, 1978.

U.S. Department of Labor. All About OSHA. Programs and Policy Series. Washington, D.C.: OSHA 2056 (Revised 1980).

University of Illinois at Urbana. OSHA Handbook for Vocational and Technical Education Teachers. Votec 399, EE.

ANSWERS TO ACTIVITIES

ACTIVITY 1

To reduce workplace hazards through safety and health programs.

ACTIVITY 2

1. Establish federal safety standards.
2. Conduct workplace inspections.
3. Issue citations and money penalties to employers who violate standards.

ACTIVITY 3

Occupational Safety and Health Review Commission

ACTIVITY 4

Number 3.

ACTIVITY 5

1. Employees of farms at which only members of farm employer's family are employed.
2. Self-employed workers.
3. Employees at workplaces already covered under other Federal statutes.

ACTIVITY 6

1. a. ✓
   b. ✓
   c. ✓
   d. ✓

2. File a written complaint to OSHA within 30 days of the incident.
3. a. yes.
   b. yes.
   c. no.

ACTIVITY 7

Each worker shall follow all occupational safety and health standards and all rules, regulations, and orders issued under the Act.

ACTIVITY 8

The employer.

ACTIVITY 9

The employer must provide a workplace free from recognized hazards that are causing or likely to cause death or serious physical harm to employees.

ACTIVITY 10

1. Imminent danger situations.
2. Accidents result in hospitalization or death of five or more employees.
3. Valid complaints from employees of unsafe or unhealthful work conditions.
4. High hazard industries or workplaces chosen for inspection because of death, injury, or illness rate.
5. Reinspection of workplaces to determine whether hazards have been corrected.

ACTIVITY 11

1. Temporary a
2. Permament c
3. National defense b

ACTIVITY 12

1. Probable violations.
2. Time required for elimination of any hazards.

ACTIVITY 13

1. De minimis
2. Nonserious
3. Serious
4. Willful

5. Repeated.
6. Imminent danger.

ACTIVITY 14

1. Civil penalties can be imposed by OSHA Review Commission.
2. Criminal penalties are imposed by U.S. Courts.

ACTIVITY 15

1. The enforcement of safety policies and programs.
2. Recognition of good safety records.
3. Participation in meetings and other events that show support for company safety.

ACTIVITY 16

1. Log and Summary of Occupational Injuries and Illnesses (OSHA Form No. 200).
2. Supplemental Record of Occupational Injuries and Illnesses (OSHA Form No. 101).

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Region II
(NY, NJ, PR, VI, CZ)
Room 3445, 1 Astor Plaza
1515 Broadway
New York, NY 10036
Telephone: (212)944-3426

Region III
(DE, DC, MD, PA, VA, WV)
Gateway Bldg., Suite 2100
3535 Market Street
Philadelphia, PA 19104
Telephone: (215)596-1201

Region IV
(AL, FL, GA, KY, MS, NC, SC, TN)
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Telephone: (404)881-3573

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555 Griffin Square, Room 602
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Federal Bldg. — U.S. Courthouse
701 "C" Street
Telephone: (907)271-5152

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Phoenix, AZ 85004
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2721 North Central Avenue
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Little Rock, AR 72205
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Telephone: (213)432-3434

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Lakewood, CO 80204
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299 East Broward Blvd. — Room 301
Telephone: (305)527-7292

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2809 Art Museum Drive
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Niles, IL 60648
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Hato Rey, PR 00918
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Carlos Chardon – Room 555
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Providence, RI 02903
Federal Bldg. & U.S. Post Office –
Room 204
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American Bank Tower – Suite 310
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Harlingen, TX 78550
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